

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2013, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Cheryl P. Hunter, Esq.
Dearra R. Godinez, Esq.
Kirk & Chaney
101 Park Avenue, Suite 800
Oklahoma City, OK 73102
ATTORNEYS FOR PLAINTIFF

/s/Henry D. Hoss

Henry D. Hoss

Court's Instruction No. _____

Explanation to Jury Panel of Voir Dire

As possible jurors you will be questioned to determine your qualifications to serve in this case. The purpose of these questions is to obtain a fair jury. Since this is an important part of the trial, it is necessary that you be given an oath to answer truthfully all questions asked you about your qualifications to serve as jurors. Will you please stand, raise your right hand, and the oath will now be given to you by _____.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.1.

Court's Instruction No. _____

Oath on Voir Dire

Do you solemnly swear that you will truly and fully answer all questions asked you by the Judge or the lawyers to serve as a juror in the case now on trial, so help you God? [Juror should be required to answer "I do."].

or

Do you affirm under the pains and penalties of perjury to truly and fully answer all questions asked you by the Judge or lawyers to serve as a juror in the case now on trial? [Juror should be required to answer "I do."].

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.2.

Court's Instruction No. _____

Oath Administered to Jury

Do you solemnly swear that you will well and truly try the matter submitted to you in the case now on trial and reach a true verdict, according to the law and the evidence presented to you, so help you God? [Juror should be required to answer "I do."].

or

Do you affirm under the pains and penalties of perjury that you will well and truly try the matters submitted to you in the case now on trial and a true verdict render, according to the law and the evidence? [Juror should be required to answer, "I do."].

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.3.

Court's Instruction No. _____

Jury's Duties- Cautionary Instructions- To Be Given After Jury is Sworn

Members of the Jury: I will now explain to you your duties as jurors. It is vital to the administration of justice that you fully understand and faithfully perform these duties.

It is my duty to determine all of the law applicable to this case and to inform you of that law by these instructions and by the instructions that I will give you after all evidence has been received. It is your duty to accept and follow all of these instructions as a whole, not accepting one or more of these instructions and disregarding the others.

It is your duty to determine the facts of this case from the evidence produced in open court. You should consider only the evidence introduced while the court is in session. It is then your duty to apply the law, as determined by the court, to the facts as determined by you, and thus render a verdict. You should not allow sympathy or prejudice to influence your decision. Your decision should be based upon probabilities, and not possibilities. It may not be based upon speculation or guesswork.

The evidence which you are to consider consists of the testimony of the witnesses; the exhibits, if any, admitted into evidence; any facts admitted or agreed to by the attorneys; and any facts which I instruct you to accept as true. The term "witness" means anyone who testifies in person, or by deposition, including the parties.

In addition, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified when considered with the aid of the knowledge which you each possess in common with other persons. You may make deductions and reach conclusions which reason and common sense lead you to draw from

the facts which you find to have been established by the testimony and evidence in the case.

The production of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to object to the production of evidence and my duty to rule on these objections. If I say the objection is sustained, you must not consider the testimony or exhibit covered by the objection. If I say the objection is overruled, you may consider the testimony or exhibit covered by the objection. The attorney's objections, and my rulings upon these objections, together with the reasons for these objections and rulings are not evidence and should not be considered by you.

The statements, remarks and arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but are not evidence. If any statement, remark or argument of an attorney has no basis in the evidence, then you should disregard it.

You are the sole judges of the believability of each witness and the value to be given the testimony of each. You should take into consideration the witness's means of knowledge, strength of memory and opportunities of observation. Also consider the reasonableness, consistency or inconsistency of the testimony. You should also consider the bias, prejudice or interest, if any, the witness may have in the outcome of the trial, the conduct of the witness upon the witness stand and all other facts and circumstances that affect the believability of the witness.

My rulings and remarks made during the course of this trial are not intended to indicate my opinion as to the facts. During all recesses and adjournments, while this case

is in progress, you must not discuss this case, or anything about this case, with anyone, and you must not allow anyone to discuss it with you. This rule applies not only to court employees, the attorneys involved in this case, and others you may meet in the courthouse, but also to your husband and wife, other members of your family, your friends and anyone else you may meet. If during the trial anyone talks to you or tries to talk to you about this case, you must immediately report it to me, or the [(clerk of the court)/bailiff], who will report to me.

Do not, before this case is finally submitted to you for a decision, talk to your fellow jurors about this case, or anything about this case, or form or express any opinion about it.

Do not read newspaper reports or obtain information from the internet about this trial or the issues, parties or witnesses involved in this case, and do not watch or listen to television or radio reports about it. Do not attempt to visit the scene or investigate this case on your own.

The reasons for these rules are that it is essential that you should keep your minds free and open at all times throughout this trial and that you should not be influenced by anything except the evidence you hear and see in the courtroom.

From now on, at the beginning of each recess or adjournment, I will refer to these instructions as "my instructions" or "my usual instructions," but whether or not this is done, you will carefully observe these rules at all times.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUII2d No. 1.4.

Court's Instruction No. _____

Issues In The Case

The parties to this case are Fake Bake LLC, which is the Plaintiff, and the Defendant, Wormser Corporation.

It is Wormser's position that it has paid the Plaintiff Fake Bake for all amounts owed to Fake Bake and that Fake Bake is actually indebted to Wormser. Wormser has paid Fake Bake by continuing to fill orders placed by Fake Bake with Wormser. This is called a set-off. It is Wormser's position that the total amount of Fake Bake's outstanding orders which are due and payable exceed the amount of Fake Bake's claim.

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. And if I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to confer with the lawyers out of your hearing with regard to questions of law or procedure that require consideration by the court alone. On some occasions you may be excused from the courtroom for the same reason. I will try to limit these interruptions as much as possible, but you should

remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 2.1 (MODIFIED); 3 O'Malley, Grenig & Lee, Fed. Jury Prac.e & Instr. (6th Ed. 2011) (MODIFIED).

Court's Instruction No. _____

Order of Trial

The case will proceed as follows:

First, Plaintiff's lawyer may make an opening statement outlining his case. Defendants' lawyers may also make an opening statement outlining their case immediately after Plaintiff's statement. Neither party is required to make an opening statement. What is said in opening statement is not evidence, but is simply an outline to help you understand what each party expects the evidence to show.

Second, after the opening statements, Plaintiff will present evidence in support of its claim and Defendants' lawyers may cross-examine the witnesses. At the conclusion of Plaintiff's case, Defendants may introduce evidence, and Plaintiff's lawyer may cross-examine Defendants' witnesses. Defendants, however, are not required to introduce any evidence or to call any witnesses. If Defendants introduce evidence, Plaintiff may then present rebuttal evidence.

Third, after the evidence is presented, the parties' lawyers may present closing arguments explaining what they believe the evidence has shown and as to the inferences which they contend you should draw from the evidence. What is said in closing argument, just as what is said in opening statement, is not evidence. The arguments are designed to present to you the contentions of the parties based on the evidence introduced.

Fourth, I will instruct you on the law which you are to apply in reaching your verdict.

Judge of the District Court

_____ Given

_____ Refused

_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Inst. § 101.02 (6th Ed. 2011).

Court's Instruction No. _____

Evidence in the Case

The evidence in the case will consist of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been judicially noticed, and which I instruct you to take as true for the purposes of the case.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. A “stipulation” is an agreement between both sides that certain facts are true. When the attorneys on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

The court may take judicial notice of certain facts or events. When the court declares that it will take judicial notice of some fact or event, you must accept that fact as true.

Any evidence as to which an objection is sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testified. You may draw

from the facts that you find have been proved, such reasonable inferences or conclusions as you feel are justified in the light of your experience.

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is difficult and time consuming for the reporter to read back lengthy testimony. I urge you to pay close attention to the testimony as it is given.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 101.40 (6th Ed. 2011) (MODIFIED).

Court's Instruction No. _____

Province of Judge and Jury

After all the evidence has been heard and arguments and instructions are finished, you will meet to make your decision. You will determine the facts from all the testimony and other evidence that is presented. You are the sole and exclusive judge of the facts. I must stress that you are required to accept the rules of law that I give you, whether or not you agree with them.

The law permits me to comment on the evidence in the case during the trial or while instructing the jury. Such comments are only expressions of my opinion as to the facts. You may disregard these comments, entirely, because you are to determine for yourself the weight of the evidence and the credibility of each of the witnesses.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 101.10 (6th Ed. 2011).

Court's Instruction No. _____

Judge's Questions to Witnesses

During the trial, I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of my questions. I may ask a question simply to clarify a matter, not to help one side of the case or hurt another side.

Remember at all times that you, as jurors, are the sole judges of the facts of this case.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. §§ 101.30, 102.72 (6th Ed. 2011).

Court's Instruction No. _____

Set-off

Defendant Wormser is entitled to a set-off or credit for all payments which it has made to Plaintiff and for all amounts plaintiff owes Wormser. Therefore, if you find that Plaintiff has proved its claim for damages then you must deduct from any such claim all payments made by Wormser and all outstanding amounts owed by plaintiff to Wormser for any product supplied to Plaintiff or product for which Plaintiff has ordered from Wormser.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

Court's Instruction No. _____

Cautionary Instructions Before Court Recess

(You will not be required to remain together while the court is in recess.) It is important that you obey the following instructions with reference to the recesses of the court:

First: Do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit you should keep an open mind throughout the trial, reaching your conclusion only during your final deliberations after all the evidence is in and you have heard the attorneys' summations and my instructions to you on the law, and then only after an interchange of views with the other members of the jury.

Second: Do not permit any person to discuss the case in your presence, and if anyone does so despite your telling him not to, report that fact to the court as soon as you are able. You should not, however, discuss with your fellow jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third: Though it is a normal human tendency to converse with people with whom one is thrown in contact, please do not, during the time you serve on this jury, converse whether in or out of the courtroom, with any of the parties or their attorneys or any witness. By this I mean not only do not converse about the case, but do not converse at all, even to pass the time of day. In no other way can all the parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Fourth: Do not read about the case in the newspapers, or listen to radio or television broadcasts about the trial. If a newspaper headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters which are not proper evidence for your consideration. You must base your verdict solely on what is brought out in court.

Fifth: Do not do any research or make any investigation about the case on your own.

Sixth: Do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Seventh: If you need to tell me something, simply give a signed note to the [marshal] [bailiff] [clerk] to give to me.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. §§ 101.11, 102.01 (6th Ed. 2011).

Court's Instruction No. _____

General Introduction--Province of the Court and Jury

MEMBERS OF THE JURY:

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law.

It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law.

[The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the law stated by the lawyers and as stated in these instructions, you are governed by my instructions.]

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 103.01 (6th Ed. 2011).

Court's Instruction No. _____

Jury's Duties- Cautionary Instructions- Corporation as Party

All parties to a lawsuit are entitled to the same fair and impartial consideration, whether they are corporations or individuals.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.6.

Court's Instruction No. _____

Questions Not Evidence

If a lawyer asks a witness a question that contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 103.34 (6th Ed. 2011).

Court's Instruction No. _____

Determining Credibility [Believability] of Witness

You are the sole judges of the believability of each witness and the value to be given the testimony of each. You should take into consideration the witness's means of knowledge, strength of memory and opportunities for observation. Also consider the reasonableness and consistency or inconsistency of the testimony.

You should also consider the bias, prejudice, or interest, if any, the witness may have in the outcome of the trial, the conduct of the witness upon the witness stand, and all other facts and circumstances that affect the believability of the witness.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 3.13.

Court's Instruction No. _____

Impeachment--Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 105.04 (6th Ed. 2011).

Court's Instruction No. _____

Burden of Proof – Generally

While I am instructing you on the law you are to apply in this case, you will be instructed that the Plaintiff has the burden of pleading and proving every essential fact and element of its cause of action. That is so because in a civil lawsuit, such as this one, the law provides which party is to prove certain things to you. This is called the “Burden of Proof.” And, when I say that a party has the burden of proof, or use expressions such as “if you find” or “if you decide” I mean you must be persuaded, considering all the evidence, that the proposition for which a party has the burden is more probably true than not true.

The Plaintiff is obliged to prove every essential fact and element for each of its claims.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 3.1; 29 AM. JUR.2d *Evidence* § 158 (2d ed. 1994).

Court's Instruction No. _____

Damages - Generally

If you find that any one of the Defendants is liable to Plaintiff, then you must determine the amount of money, if any, to award to Plaintiff as damages. If you find that any one of the Defendants is not liable, then you do not need to consider the subject of damages for that Defendant.

Plaintiff must prove by a preponderance of the evidence the amount of any damages to be awarded. However, Plaintiff is not required to prove its damages with mathematical precision because it is not always possible that a party can prove the exact amount of its damages. Therefore, it is necessary only that Plaintiff prove its damages to a reasonable certainty or a reasonable probability. However, you may not award damages on the basis of guess, speculation or conjecture.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

Authority: M. Ci J.I. § 142.30, Introduction to Damages (Breach of Contract) (MODIFIED); *Joerger v. Gordon Food Services*, 568 N.W.2d 365 (Mich. App. 1997); *Fera v. Village Plaza, Inc.*, 242 N.W.2d 372 (Mich. 1976).

Court's Instruction No. _____

Damages - Reduction

(To follow Court's Instruction No. __; Damages - Generally)

If you find that Wormser Corporation is liable to Plaintiff, then you must reduce the amount of money, if any, awarded to Plaintiff as damages by the value of the goods or product Wormser supplied to Plaintiff.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

Authority: 24 Okla. Stat. § 120(D); MCL 566.38(4). M. Ci J.I. § 142.30, Introduction to Damages (Breach of Contract) (MODIFIED);

Court's Instruction No. _____

Jury's Duties- Introduction to Instructions- To Be Given After the Evidence

It is now my duty to further explain your duties as jurors, and to further inform you of the law applicable to this case. It is your duty to faithfully perform your duties and to accept and follow all instructions of the law as a whole, including the instruction I gave you at the beginning of this trial [and the instructions I gave you during the course of this trial]. You are not free to accept and follow one or more of these instructions and disregard the other.

A written copy of all instructions will be given to you before you begin your deliberations.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.8.

Court's Instruction No. _____

Burden of Proof- Greater Weight of the Evidence

In a civil lawsuit, such as this one, the law provides which party is to prove certain things to you. This is called "Burden of Proof."

When I say that a party has the burden of proof on any proposition by the greater weight of the evidence, or use the expression "if you find," or "if you decide", I mean you must be persuaded, considering all the evidence in the case, that the proposition on which such party has the burden of proof is more probably true than not true. The greater weight of the evidence does not mean the greater number of witnesses testifying to a fact, but means what seems to you more convincing and more probably true.

A party who seeks to recover on a claim, or a party who raises an affirmative defense has the burden to prove all the elements of the claim or defense. In deciding whether a party has met the burden of proof, you are to take into account all the evidence, whether offered by that party or any other party.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 3.1 (MODIFIED).

Court's Instruction No. _____

Burden of Proof – Clear and Convincing Evidence

When I say that a party has the burden of proving any proposition by clear and convincing evidence, I mean that you must be persuaded, considering all the evidence in the case, that the proposition on which the party has this burden of proof is highly probable and free from serious doubt.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 3.2.

Court's Instruction No. _____

No Speculation

Your decision must be based upon probabilities, not possibilities. It may not be based upon speculation or guesswork.

Judge of the District Court

Given

Refused

Modified

AUTHORITY: OUJI2d No. 3.3.

Court's Instruction No. _____

Communications Between Court and Jury During Jury's Deliberations

If it becomes necessary during your deliberations to communicate with me, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me by any means other than a signed writing, and I will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open Court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to me--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: O'Malley, Grenig & Lee, 3 Fed. Jury Prac. & Instr. § 106.08 (6th Ed. 2011).

Court's Instruction No. _____

Mandatory Instruction Upon Discharge

You have now completed your duties as jurors in this case and are discharged. The question may arise whether you are free to discuss this case with anyone. This is entirely your decision. If any person tries to discuss the case over your objection, or becomes critical of your service, please report it to me immediately.

Judge of the District Court

_____ Given
_____ Refused
_____ Modified

AUTHORITY: OUJI2d No. 1.11